Supreme Court, U.S.
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No. 97-_____

In The
Supreme Court of the United States
October Term, 1997

KEVIN LAUGHLIN, EDWARD DYCK,
CARRIE ALSPAW and MARK DOTZLER,
Petitioners,

vs.

H. ROSS PEROT, MARK ALAN BLAHNIK,
THE CALLAHAN & GIBBONS GROUP,
U. S. DATALINK, INC., and TRW, INC.,
Respondents.

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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December 29, 1997

58 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether an "address update" or other subset of a consumer's credit report is a "consumer report" as described in the Fair Credit Reporting Act (FCRA, 15 U.S.C. § 1681 et seq.) and did the court violate petitioners' Fourteenth Amendment rights by considering just 3 of 7 factors listed in 15 U.S.C. § 1681a(d)?

2. Whether the lower court can nullify a Federal statute by stating the FCRA does not apply to the procuring of information about individuals who are not in the class of persons listed in 15 USC § 1681b(3) (A) without declaring it unconstitutional and not violate the Constitutionally guaranteed Separation of Powers?

3. Whether Title 1.6 § 1785.3 of the California Civil Code preempted by 15 U.S.C. § 1681t?

4. Whether an independent Presidential candidate who started and funded an unincorporated committee, fulfilled all requirements to be afforded protection of a state's election laws, sent paid political and personal people into that state and visited the state during the campaign is subject to personal jurisdiction of that state for a cause of action arising out of the campaign without violating their Fourteenth Amendment due process rights?

5. Whether Callahan & Gibbons' contacts with Missouri is sufficient to support jurisdiction by a Missouri court without violating their Fourteenth Amendment due process rights?

6. Whether Plaintiffs make a prima facie case showing that Callahan & Gibbons impermissibly accessed plaintiffs' credit files through the use of the Orix access code?

7. Whether the failure of an Appellate Court to allow petitioners to supplement the record, when presented with defendants' misleading and/or perjured testimony, violates petitioners' Fourteenth Amendment equal protection & due process rights?

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners, KEVIN LAUGHLIN, et al. petition for a writ of certiorari to issue to review an opinion of the Eighth Circuit Court of Appeals which upheld the unconstitutional judicial nullification of the Fair Credit Reporting Act, an incorrect and unlawful definition of subsets of consumer report and personal jurisdiction dismissals of Ross Perot, Mark Alan Blahnik and Callahan & Gibbons.

The case below involved four volunteers, Kevin Laughlin, Edward Dyck, Carrie Alspaw and Mark Dotzler, who volunteered to place the name of Ross Perot on the 1992 Presidential ballot in Missouri. The respondents are the candidate, Ross Perot, his director of field operations for the campaign and petition drive, Mark Alan Blahnik, the private investigation firm hired to perform secret background checks on petitioners, Callahan & Gibbons and two consumer reporting agencies, TRW and U.S. Datalink, who supplied information from petitioners' credit files to Callahan & Gibbons.

OPINIONS BELOW

The opinion of the Eighth Circuit was rendered on August 26, 1997, and is unreported. See Appendix A. A petition to the Eighth Circuit for rehearing en banc was denied on September 29, 1997. The memorandum opinion of the district court for Defendants Ross Perot, Mark Alan Blahnik and The Callahan & Gibbons Group was issued on September 1, 1995. See Appendix B. The memorandum opinion of the district court for Defendants U.S. Datalink, Inc. and TRW Inc. was issued on February 6, 1996. See Appendix C and Appendix D.

JURISDICTION

Supreme Court jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1), 1651 and 2106, and Article III of the Constitution of the United States.

This petition was filed within ninety (90) days of the denial of a petition for rehearing from the Eight Circuit.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONSTITUTION

Article I, Section One:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article VI, Paragraph 2:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Fourteenth Amendment, Section One:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges

or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

UNITED STATES CODE

Title 15, Commerce and Trade

Section § 1681a: Definitions; rules of construction [for the Fair Credit Reporting Act]:

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 1681b of this title. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom

the request was made and such person makes the disclosures to the consumer required under section 1681m of this title.

Section 1681b: Permissible purposes of consumer reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe -

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit

granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Section 1681t: Relation to State laws

This subchapter does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any state with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

CALIFORNIA CIVIL CODE

Title 1.6: Consumer Credit Reporting Agencies Act

Section 1785.3: The following terms as used in this title have the meaning expressed in this section:

(c) "Consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for: (1) credit to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) hiring of a dwelling unit,

as defined in subdivision (c) of Section 1940, or (4) other purposes authorized in Section 1785.11.

STATEMENT OF THE CASE

This case involves the subject of a petition drive to place the name of Ross Perot on the 1992 Presidential ballot in the State of Missouri. Petitioners were volunteers in that effort.

On or about May 5, 1992, TRW provided information with respect to Mr. Dyck and Mr. Dotzler to U.S. Datalink and Equifax Credit Information Systems (Equifax), another credit reporting agency, supplied information with respect to Mr. Laughlin to U.S. Datalink pursuant to the request of the Callahan & Gibbons Group which was conducting secret investigations of Perot campaign workers and electors in Missouri and other states. The information supplied consisted of parts of the consumer credit files of petitioners. The only relationship petitioners had with the Perot Petition Committee (PPC), formed by Ross Perot, or Ross Perot were as volunteers and electors in Missouri.

On May 7, 1992, only two days after Callahan & Gibbons had secured information from U.S. Datalink, Petitioners' credit files with Equifax were accessed through an access code of Orix Credit Leasing. Petitioners had no knowledge of Orix and it was later determined through an investigation conducted by the FBI and US Secret Service that Equifax's files were "computer hacked" in an unauthorized manner using Orix's access code. Information available only on petitioners' credit files found its way onto a report Callahan & Gibbons supplied to the PPC. The information included Ms. Alspaw's previous employment history and Mr. Laughlin's Social Security Number (SSN).

Petitioners also made claims against Ross Perot for violation of the Fair Credit Reporting Act, invasion of privacy,

defamation, false imprisonment and negligence. Petitioners claimed that Ross Perot through his agents and employees engaged in tortuous conduct which damaged Petitioners in the State of Missouri. During April or May 1992, a decision between Sandra McClure, who replaced Mr. Laughlin as head of the Missouri petition effort, members of the PPC and Ross Perot was made to cease the petition effort Petitioners had worked on and repetition the State of Missouri.

The basis for subject matter jurisdiction in the district court was provided by 28 U.S.C. § 1331 as the action arose under the constitution, laws or treaties of the United States.

The case was commenced by the filing and service of a complaint on May 4, 1994.

On September 1, 1995, the District Court dismissed defendants Ross Perot, Mark Alan Blahnik, and the Callahan & Gibbons Group for lack of personal jurisdiction. See Appendix B.

On February 6, 1996, the District Court granted defendants' U.S. Datalink Inc. and TRW's motions for summary judgment. See Appendix C.

On May 14, 1996, the judgments of September 1, 1995 and February 6, 1996 were made final judgments. On or about June 7, 1996, a Notice of Appeal was filed. The appellate court's jurisdiction was invoked pursuant to Federal Rule of Civil Procedure 54(b) in that the plaintiffs were appealing from a final judgment, subject to appeal, by the United States District Court for the Eastern District of Missouri. The issues on appeal included:

1) Whether Callahan & Gibbons' contacts with Missouri were sufficient to support personal jurisdiction,

2) Whether the court could find that there was no tortuous conduct of Callahan & Gibbons in Missouri despite the conflict between their affidavits and plaintiff's evidence,

3) Whether Plaintiffs made a prima facie case showing that Callahan & Gibbons impermissibly accessed Plaintiffs' credit files using the Orix access code,

4) Whether Ross Perot's contacts and actions with Missouri were sufficient to support personal jurisdiction,

5) Whether the actions of Perot's employee, Russ Melbye, was sufficient to confer jurisdiction of Ross Perot, and

6) Whether the "address update" furnished by U.S. Datalink and TRW constitutes a consumer report under the FCRA.

The Eighth Circuit affirmed the district court, without comment and unpublished, on August 26, 1997. See Appendix A.

A petition to the Eighth Circuit for a rehearing en banc was denied on September 29, 1997.

REASONS FOR GRANTING THE WRIT

1. An "address update" or other subset of a consumer's credit report is a "consumer report" as described in the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) The lower court violated petitioners' constitutional rights to equal protection by virtue of their exclusion of four of the seven factors described in 15 U.S.C. § 1681a(d) when determining whether a subset of a consumer's credit file is itself a consumer report.

A consumer report, as defined by 15 U.S.C. § 1681a(d) is

> "[A]ny written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, **personal characteristics**, or **mode of living** which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing. . ." (emphasis added)

Plaintiffs contend that subsets of a full consumer credit file (containing name, current address, former address(es), social security number, marital status, employment and/or length of various residences) are consumer reports as they bear directly on a consumer's mode of living and/or their personal characteristics as stated in 15 U.S.C. § 1681a(d).

Nowhere in any case, including the case below, that plaintiffs have been able to locate, is there a decision that subsets do not bear on a consumer's mode of living and/or their personal characteristics. In the summary section of several cases, courts have listed the seven factors and made a general statement that subsets are not consumer reports yet in the legal analysis supporting these conclusions, there is no mention made of mode of living and/or personal characteristics. Instead, courts say that subsets do not bear on a consumer's credit worthiness, credit capacity, etc. never referring to either mode of living or personal characteristics. Plaintiffs agree that many subsets do not bear on a consumer's credit worthiness, credit capacity, credit standing, character or general reputation. This argument is irrelevant and misses the point.

Congress defined a consumer report as one of seven, mutually exclusive factors. It is not plaintiffs job to prove that a subset bears on all seven or even six or five. Plaintiffs need only

show that the information bears on one of the seven factors and then the burden has been met.

We have continually met this burden yet the courts below have held plaintiffs to an unconstitutionally high standard by ignoring the two relevant factors, personal characteristics and mode of living, (and two others) and not applying the law evenly and fairly.

The information supplied by TRW and U.S. Datalink originally from petitioners' credit files. It included petitioners' name, former name(s), current address, former address(es), social security number, date of birth, marital status, spouse and/or employment.

This information clearly bears on petitioners' mode of living. Black's Law Dictionary 6th Edition, page 935, describes Living as "to abide, to dwell, to reside." Mode is defined at page 1003 as the "manner in which a thing is done. . ." One's residence or address directly pertains to one's mode of living.

The information also bears on petitioners' personal characteristics. Webster's New Collegiate Dictionary 2nd Edition, page 139, describes Characteristic as "[a] trait, quality, or property distinguishing an individual." Personal is defined at page 628 as "Of or pertaining to a particular person; private; not public or general." Personal characteristics pertaining to petitioners include their name, spouse's name, Social Security Number, current address and length of time at that address. These personal characteristics separate Kevin Laughlin, Edward Dyck, Carrie Rudberg and Mark Dotzler from any other human being.

Petitioners have clearly met their burden of proving the information supplied bears on not one, but two of the seven factors listed in 15 U.S.C. § 1681a(d) defining a consumer report.

2. The lower court cannot judicially create a requirement that nullifies a Federal statute — specifically by stating that the Fair Credit Reporting Act (FCRA) does not apply to the procuring of information about individuals who are not in the class of persons listed in 15 U.S.C. § 1681b(3) (A) without declaring the statute unconstitutional. This action violates Article I, Section 1 of the Constitution. In addition, there is a conflict between the circuits regarding whether the FCRA applies to persons not listed in 15 U.S.C. § 1681b(3)(A) *Hansen v. Morgan*, 582 F. 2d 1214 (9th Cir. 1978) *and Heath v. Credit Bureau of Sheridan, Inc.*, 618 F. 2d 693 (10th Cir. 1980) support plaintiffs position while the decision below and *Henry v. Forbes*, 433 F. Supp. 5 (D. Minn. 1976) oppose plaintiffs' position.

Title 15 U.S.C. §1681b states in part: "A consumer reporting may furnish a consumer report under the following circumstances **and no other**:" (Emphasis added) and then lists the circumstances.

Respondents have argued that since Plaintiffs admit they were not engaged in one of the enumerated actions described in §1681b then the FCRA does not apply. This premise, while supported in *Henry* ("The Fair Credit Reporting Act, in terms or in legislative intent, does not cover the procuring of information about persons not involved in consumer transactions") and found to be applicable by the lower court ruling **is based on a faulty premise** -- that applicability of the Act is governed entirely by the purpose of the person requesting the information. This idea is rejected in *Heath*. The court stated that,

> ". . . a critical phrase in the definition of a consumer report is the second requirement: the relevant information must be 'used or expected to be used or collected in whole or in part

> for the purpose of serving as a factor' with regard to enumerated transactions. . ."

Id. at 696. Further, quoting *Hansen* at 1218, the *Heath* court said, "[I]f at the time the information was collected, the agency expected it to be used for proper purposes, a transmittal of that information would be a consumer report."

This lower court and *Henry* rulings permit one to obtain a consumer report on anyone, even without a permissible purpose, just as long as there is no "consumer transaction" between the parties because the consumer report would cease to be a consumer report. These decisions are completely inapposite and effectively nullify 15 U.S.C. § 1681q which imposes criminal liability for acquiring information on a consumer under false pretenses.

The objectives of the act could be defeated if users could obtain information from consumer reporting agencies under false pretenses with impunity. *Hansen* at 1220.

Further, in *Belshaw v. Credit Bureau of Prescott*, 392 F. Supp 1356 (1975), the court stated at 1359,

> "The [FCRA] cannot be interpreted as applicable to the activities of credit reporting agencies only when the consumer applies for credit, insurance, or employment, leaving them otherwise free to continue the very practices the Act was designed to prohibit. . .The Act would afford little protection for the privacy of a consumer if it only regulated credit reporting agencies in the area of their legitimate business activities but left them free to continue their clandestine activities in other areas."

Article I, Section 1 of the Constitution vests all legislative powers to Congress. The judiciary is prohibited from legislating.

The FCRA must apply to persons not listed in 15 U.S.C. § 1681b(3)(A) otherwise the law is meaningless.

The conflict in the different circuits dates back 20 years and is ripe for a definitive ruling by this court.

3. California Civil Code § 1785.3 is in direct conflict with 15 U.S.C. § 1681a(d) and must be preempted as dictated by 15 U.S.C. § 1681t and Article VI of the US Constitution.

TRW, in their reply brief to petitioners' appeal, uses the standard described in *Gomon v. TRW, Inc.*, 34 Cal Rptr 2d 256 (Cal. App. 4 Dist. 1994) as a basis for affirming the decision that subsets of consumer credit files are not consumer reports. The legal basis for *Gomon*, California Civil Code § 1785.3, must be preempted by 15 U.S.C. § 1681a(d) as required by 15 U.S.C. § 1681t.

Section 1785.3 of the California Civil Code defines a "consumer credit report" as:

> "any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's **credit worthiness, credit standing,** or **credit capacity,** which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor. . ." (emphasis added)

15 U.S.C. § 1681t states:

> "This subchapter [of the FCRA] does not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those

> laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency."

The California statute does not allow for a consumer report to be based on information bearing on a consumer's *character, general reputation, personal characteristics, or mode of living.* This statute must exactly duplicate the federal statute with respect to the seven characteristics enumerated in 15 U.S.C. §1681a(d). Currently, the State of California permits information to be disseminated bearing on the four non-included Federal characteristics treated as not being a consumer report when, as a matter of law, the Federal statue dictates that the information is a consumer report. Section 1785.3 of the California Civil code is an obstacle to the purposes and objectives of the FCRA.

Under the Supremacy Clause of the United States Constitution, Article VI, if state law is in direct conflict with federal law such that compliance with both is impossible or the state law is an obstacle to the accomplishment of the full purposes and objectives of Congress, the state law is preempted. *See Silkwood v. Kerr-McGee Corp.* 464 US 238, 257, 104 S.Ct. 615, 621 (1984).

Numerous court cases use the *Gomon* standard when determining whether a subset of a credit report is a credit report. The restrictive California Civil Code, applied nationwide, allows credit reporting agencies to disseminate consumer credit information without the safeguards Congress intended with the FCRA.

It would be nice if this court could put an end to the confusion surrounding the definition of a consumer report and reaffirm Congress' intent that their precise 7 mutually exclusive factors listed in 15 U.S.C. § 1681a(d) is exactly what they meant to define a consumer report when they crafted the FCRA.

4. **An independent Presidential candidate who purposefully and deliberately fulfils all requirements to be afforded protection of a state's election laws must be subject to that state's jurisdiction as noted in *Hanson v. Denckla*, 357 U.S. 235 (1958). In addition, a candidate who starts and funds an unincorporated committee, sends paid political and personal people into that state and visits the state during the campaign must be subject to personal jurisdiction of that state for a cause of action arising out of the campaign under basic agency theory.**

In the case of *Hanson*, this court stated that a Court may exercise personal jurisdiction if there is "some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state." *Id.* at 253.

Perot did all of the requisite acts required of any candidate for the office of President of the United States to be place on the 1992 Missouri ballot. Every stage had to be done with Perot's full knowledge and consent as he was the candidate — from the broadcast into Missouri and initial solicitation by Perot to Missouri citizens, among others, on the Larry King Show, to directing the formation of the Perot Petition Committee with its field staff assembled and directed to assist the states with banking and FEC requirements, to his prior knowledge that Missouri citizens would be subjected to secret, unauthorized background checks, to the PPC and his employees recognizing Missouri for Perot as the legitimate petition entity in Missouri for both Federal Election Commission and Internal Revenue Service requirements as, unknown to Plaintiffs, the official Missouri state committee representing the PPC, to the initial filing of Perot's Declaration for candidacy with the Missouri Secretary of State, to the re-filing of his Declaration after he told the world he was quitting the Presidential race, to the first debate held in Missouri and finally with his name appearing on the 1992 Missouri Presidential ballot with all of its protections afforded any candidate by the Missouri Secretary of State.

The lower court improperly applied standards to a regular business instead of the "political" business conducted between Perot and the state of Missouri. In the conduct of the petition drive and his campaign, Perot did all that was legally required.

Perot is personally subject to Missouri jurisdiction under *Hanson*, for one simple reason — Perot's choice not to incorporate his 1992 principal campaign committee. The Perot Petition Committee was, by Ross Perot's choice, not incorporated. As such, must be treated as any other non-incorporated business entity — as a sole proprietorship. Perot apparently learned this lesson well as his principal campaign committee in 1996, Perot 96, is incorporated.

In this case, it is clear, based upon the two declarations of candidacy on file with the Missouri Secretary of State, that Ross Perot availed himself of the laws and protections of the State of Missouri, specifically the election laws, which is sufficient to support a finding of personal jurisdiction.

Those acts are of such a nature that Perot should "reasonable anticipate being haled into court there." quoting *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 285, 100 S.Ct. 559, 567 (1980). It cannot possible offend "traditional notions of fair play and substantial justice" to have Mr. Perot appear in a Missouri Court. See *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Further, Ross Perot, as candidate, founder, and principal financier of the Perot Petition Committee (which later became Perot '92), had the "legal right to control the activities of the alleged agent [Russ Melbye]." *Malloy v. Fong*, 232 P.2d 241, 249 *citing Edwards v. Freeman*, 34 Cal.2d 589, 592, 593, 212 P.2d 883; *Empire Star Mines Co. v. Calif. Emp. Comm.*, 28 Cal.2d 33, 43, 168 P.2d 686.

As the candidate, Perot had the ability to terminate Mr. Melbye's, or any other PPC employee's, employment with the PPC

at any time for any reason. "The power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities." *Id.* "The right to immediately discharge involves the right of control." *Malloy* at 249 citing *Riskin v. Industrial Accident Comm.*, 23 Cal.2d 248, 253, 255; *Ryan v. Farrell*, 208 Cal. 200, 202-203; *Western Metal Supply Co. V. Pillsbury*, 172 Cal. 407, 417.

Ross Perot did not have to exercise this right of control in order for agency to exist. As *Malloy* at 249, citing *Empire Star Mines Co.* at 43 stated, "It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the *right* of control and supervision establishes the existence of an agency relationship." (Emphasis added.)

Perot's denial of the agency relationship does not prove that no relationship existed. In *Wallo, et al. v. Rosenberg et al.*, 331 SW2d 8, the court held that "If from the facts and circumstances it appears there was at least an implied intent to create it, the relationship may be found to exist notwithstanding a denial by the alleged principal." *Id* at 13 citing *Hawkins v. Laughlin*, Mo. App., 236 SW 2d 375; Restatement of the Law, Agency 2d, Art. 162, P. 384; *Mitchum v. Dunlap*, 98 Mo. 418.

Candidate Ross Perot had the supreme and absolute authority to choose who he wanted to be a part of his campaign. There exists more than implied intent to create a relationship. Perot had the right and authority to supervise and manage any aspect of his Perot Petition Committee.

Perot's due process rights will not be violated by conferring personal jurisdiction over him in a Missouri court. How can someone run for the highest political office in the United States and believe that he is not responsible for the conduct and actions of his unincorporated entity outside his home state?

5. Callahan & Gibbons' contacts with the State of Missouri are sufficient to support jurisdiction by a Missouri court as required by *Minnesota Mining & Mfg. V. Nippon Carbide Indus.* No. 94-3248 slip. op at 5 (8th Cir. Aug. 11, 1995).

The lower court failed to consider the at least 33 different contacts with Missouri **admitted to** by Callahan through their agent, North American Advisory, by contacting Missouri State criminal courts and Missouri Local criminal courts, as well as, the Missouri Driver's License Bureau on each of the eleven Missouri electors. The secret background checks done on Plaintiffs clearly satisfy the definition of a tortuous extraterritorial act producing actionable consequences in Missouri as stated in *Institutional Food Mktg. Assoc. Ltd. v. Golden State Strawberries, Inc.* 747 F.2d 448, 453 (8th Cir. 1984).

As technology progresses, what may have taken 44 individual letters in the past can now be accomplished with one telephone call. The standard for minimum contacts with another state need to be adaptable to changes in technology. The "required" number should decrease as technology increases because new efficiencies in technology should not penalize a plaintiffs right to sue because a magic number can no longer be obtained.

Petitioners urge the court to apply a "manual" standard when assessing minimum contacts. Under this standard, technology is analogized to its manual components. If the manual method satisfies the required minimum contacts, then the technological equivalent should also meet the requirement. In this case, one telephone call from Callahan & Gibbons, located in California, to an Illinois private investigator requesting Federal, State and Local government and Motor Vehicle database information on eleven Missouri electors can be compared to either making at least 33 separate telephone calls into Missouri or writing 33 separate letters to Missouri. Since, 33 "manual" contacts should satisfy the requirements in *Minnesota Mining & Mfg.*,

the one analogous telephone call placed by Callahan & Gibbons should satisfy the same requirement.

Callahan & Gibbons should not be surprised about litigating in Missouri. They conducted secret background checks on petitioners and should expect that a reasonable person would not like such an investigation and might take the opportunity to sue so that the person performing the secret background checks may answer for their deeds. Their Fourteenth Amendment rights will not be violated. It is petitioners' privacy that has been violated. If Callahan & Gibbons does not want to be haled into a Missouri court for doing secret background checks on Missourians then they should not have taken the job in the first place.

6. Plaintiffs made a prima facie case showing that Callahan & Gibbons impermissibly accessed plaintiffs' credit files through the use of the Orix access code. The lower court did not apply the facts in the light most favorable to Plaintiffs as required by *Watlow Elec. Mfg. Co. v. Patch Rubber Co.*, 838 F.2d 999, 1000 (8th Cir. 1988).

Evidence was presented to the lower court that employment information from Carrie Rudberg's credit report appeared on the report from Callahan & Gibbons to the Perot Petition Committee. The information was on Ms. Rudberg's previous employer. This information was not available in the public domain and directly contradicts the affidavits supplied by Callahan & Gibbons.

On Mr. Laughlin's information to the Perot Petition Committee, his social security number is listed. Mr. Laughlin's social security number was not available through the Department of Motor Vehicles or in the public domain. In an affidavit, Mr. Laughlin states that he knew of no other way for Callahan & Gibbons to obtain his social security number except from his credit files.

Furthermore, Callahan & Gibbons admits to receiving information from U.S. Datalink on petitioners on May 5 or May 6, 1992. The illegal accesses to petitioners' Equifax credit files using the Orix Leasing access code occurred on May 7, 1992.

Had the lower court viewed the deposition testimony of Ms. Rudberg, the affidavit of Mr. Laughlin and the "coincidence" of dates between May 5 and May 7, 1992 in the light most favorable to the plaintiffs as required in *Watlow*, the court would have had no choice but to deny Callahan & Gibbons' Motion to Dismiss as there are genuine issues of fact that a jury needs to decide.

7. The decision not to allow the record to be supplemented on appeal violates petitioners' constitutional rights to due process and equal protection and is in direct conflict with *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 25 Fed Rules Serv 3d, 241 (8th Cir 1993).

The appellate court misapplied its own rulings in *Dakota* and gave no weight to the factors which required entry of a finding that defendants Perot, Blahnik and Callahan & Gibbons' perjured and/or deliberately misleading testimony warranted plaintiffs be allowed to supplement the record on appeal. The decision from the court below that was based on the tainted testimony should have been vacated and the case remanded.

Petitioners presented direct evidence, in their Motions to Supplement the Record, to the Eighth Circuit Court of Appeals that included:

1) Ross Perot's Affidavit in support of his Motion to Dismiss for Lack of Personal Jurisdiction contained at least four false statements.

2) Statistical evidence that Callahan & Gibbons involved in the computer hacking of Plaintiffs' Equifax credit files with the Orix access code.

3) Mark Blahnik's Affidavit in support of his Motion to Dismiss for Lack of Personal Jurisdiction contained at least two false statements:

In 1993, the Eighth Circuit Appellate Court stated that "[w]hen the interests of justice demand it, an appellate court may order the record of a case enlarged." *Id.* at 243. Perot, Blahnik and Callahan & Gibbons intentionally misrepresented material facts to the district court leaving the court with an incomplete picture of the infringements alleged. This Court further stated that, "[i]f an appellate court could never consider new evidence in such cases, parties would have a distinct incentive to deceive the district courts, and the appellate courts would be powerless to remedy such deceptions." *Id.* at 244. Perot, Blahnik and Callahan & Gibbons intentionally deceived the district court with perjured and/or incomplete testimony deliberately designed to have their case unfairly and unjustly dismissed. When confronted with their own contradictory statements or facts gained through the pursuit of the rest of our case, they hide behind the very rules and laws they violated.

Petitioners believe that perjury and/or deliberately misleading testimony given to a District court cannot be tolerated.

If perjury is not sufficient to allow a record to be supplemented on appeal as described in *Dakota*, then what is?

This court needs to send a clear message that the American justice system is not one that can be manipulated by perjured and/or deliberately misleading testimony.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit Court of Appeals, which validated Perot, Blahnik and Callahan & Gibbons' perjured and/or misleading testimony, upheld the restricted and unconstitutional definition of a consumer report (the "*Gomon*" standard) all denying petitioners due process and equal protection as guaranteed by the Constitution.

Respectfully submitted,

Kevin Laughlin
Pro se for Petitioners
12384 E Shoreridge Drive
Maryland Heights, MO 63043
314 275-8393

December 29, 1997

APPENDIX A

Kevin Laughlin, Edward Dyck, Carrie Alspaw, Plaintiffs-Appellants,
Mark Dotzler, Plaintiff,

v.

Ross Perot, Mark Alan Blahnik, The Callahan & Gibbons Group, U.S. Datalink, Inc., TRW, Inc. Defendants-Appellees, The Perot Petition Committee, Equifax Credit Information Services, Russ Melbye, Sandra Stone McClure, Defendants.

No. 96-2676EM

Mark Dotzler, Plaintiff-Appellant,
Kevin Laughlin, Edward Dyck, Carrie Alspaw, Plaintiffs,

v.

Ross Perot, Mark Alan Blahnik, The Callahan & Gibbons Group, U.S. Datalink, Inc., TRW, Inc. Defendants-Appellees, The Perot Petition Committee, Equifax Credit Information Services, Russ Melbye, Sandra Stone McClure, Defendants.

No. 96-2677EM.

United States Court of Appeals,
Eighth Circuit

Submitted: August 21, 1997
Filed: August 26, 1997

Before FAGG, BOWMAN, and MURPHY, Circuit Judges.

PER CURIAM.

Kevin Laughlin, Edward Dyck, Carrie Alspaw, and Mark Dotzler appeal the district court's orders dismissing for lack of personal jurisdiction their claims against Ross Perot, Mark Alan Blahnik, and The Callahan & Gibbons Group, and granting summary judgment in favor of U.S. Datalink, Inc. and TRW, Inc. See Dotzler v. Perot, 899 F. Supp. 416 (E.D. Mo. 1995); Dotzler v. Perot, 914 F. Supp. 328, 330 (E.D. Mo. 1996). Although the district court's rulings did not dispose of all the claims and parties, the district court entered final judgment for these appellees under Federal Rule of Civil Procedure 54(b). Having carefully reviewed the record and the parties' briefs, we find no errors of law in the district court's analysis. We thus affirm the district court's rulings. See 8th Cir. R. 47B.

We deny the appellants' motions to supplement the record on appeal, and deny all other motions on appeal as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK DOTZLER,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00887 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	
		Consolidated With
KEVIN LAUGHLIN, et al.,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00888 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	

MEMORANDUM AND ORDER

GEORGE F. GUNN, JR., District Judge:

This matter is before the Court on the motions of defendants Ross Perot, Mark Alan Blahnik, and the Callahan & Gibbons Group to dismiss for lack of personal jurisdiction. For the reasons set forth below, the motions are granted.

Mark Dotzler, Kevin Laughlin, Edward Dyck, and Carrie Alspaw filed separate pro se complaints against defendants Ross Perot, the Perot Petition Committee ("PPC"), Mark Alan Blahnik, the Callahan & Gibbons Group ("C & G"), U. S. Datalink, Inc., Equifax Credit Information Services, Inc., TRW, Inc., Russ Melbye, and Sandra Stone McClure. Dotzler's complaint was filed as No. 4:94CV00887 GFG. The complaint filed by Laughlin, Alspaw and Dyck was assigned No. 4:94CV00888 CAS. This Court consolidated the two actions.

According to the complaints, Laughlin, with the support of Perot's representatives in Dallas, organized a group called "Missouri for Perot" to circulate petitions in order to get Perot's name on the 1992 presidential ballot as an independent candidate. Laughlin, Dyck and Dotzler developed a "Petition Pak," which contained biographical information about Perot, to distribute in Missouri and began to circulate petitions in the state. The complaints allege that Blahnik, acting as Perot's agent, hired C & G in April or May of 1992 to assist with the "security" of the petition drive. C & G investigated plaintiffs and allegedly was paid by Perot through the PPC. Plaintiffs claim C & G conducted inquiries into their consumer credit files and obtained information on Dyck and Dotzler from TRW and U.S. Datalink on May 5, 1992. Plaintiffs further allege that C & G illegally obtained their full credit reports from Equifax through the use of an access code belonging to Orix Credit Alliance on May 7, 1992.

In late April 1992, Laughlin was notified that he was being replaced as the state contact person by McClure. Plaintiffs allege that McClure developed and maintained a close working relationship with Perot and the PPC and that she later became a salaried employee. On May 19, 1992, Laughlin and Dyck attended a meeting with McClure, Russ Melbye and others at the petition drive headquarters in St. Louis. At the meeting, Laughlin and Dyck received a document ("the May 19 document") which purported to remove Laughlin, Dyck and Dotzler from their roles in the Missouri

for Perot organization for various forms of misconduct. Plaintiffs claim the allegations in the May 19 document are false.[1] McClure allegedly instructed Laughlin and Dyck to sign letters of resignation which had been prepared for them and Laughlin and Dyck were told that they would not be allowed to leave the room until they signed the letters. Laughlin and Dyck allege that they were forced to remain in the room for about one-half hour before they were allowed to leave.

Thereafter, at a May 29, 1992 news conference, McClure announced that the State of Missouri had to be repetitioned and that seven of the eleven original electors, including plaintiffs, had to be replaced. Perot allegedly supported McClure's repetition efforts and Perot's administrative assistant, Joe Grant, allegedly made statements to the news media indicating Perot's support for the effort. McClure stated that Laughlin and Dyck were unacceptable as electors because: (1) they had refused to sign the declaration of candidacy forms; (2) Dyck engaged in financial misconduct in connection with the petition drive; (3) Laughlin and Dyck refused to sign a loyalty oath; and (4) Laughlin had mishandled funds and mismanaged the petition drive. Laughlin and Dyck allege that these statements were false and were made with the knowledge of their falsity. McClure's statements were subsequently published in Missouri newspapers.

The complaints allege, inter alia, that Perot, PPC, Blahnik, and C & G violated the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681a-1681t, by knowingly and willfully obtaining information on plaintiffs from a consumer reporting agency, Equifax, under false pretenses (Count I), and that Perot, PPC and C & G invaded plaintiffs' privacy by obtaining consumer information from Equifax for impermissible purposes (Count VIII). Dotzler, Dyck and Laughlin assert that Perot, PPC, McClure and Melbye defamed them by publishing the May 19 document with knowledge that the allegations contained therein were false (Count IX).

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[1] A copy of the document is attached to each of the complaints.

Laughlin and Dyck allege that McClure knowingly made several false and defamatory statements to the press and to the volunteers and that in so doing, McClure was acting as the agent of Perot and the PPC (Count X, Laughlin complaint). Laughlin and Dyck also assert a claim of false imprisonment based on the May 19, 1992 incident and claim that McClure and Melbye were acting as agents of Perot and the PPC at the time of the incident (Count XI, Laughlin complaint). Finally, all plaintiffs allege that Perot failed to exercise reasonable control over his agents (Count X, Dotzler complaint; Count XII, Laughlin complaint).

C & G, Blahnik, and Perot have moved to dismiss the claims against them for lack of personal jurisdiction. Pursuant to this Court's order, Dotzler filed a letter response. Document 61. Laughlin, Dyck and Alspaw initially responded to the motions pro se. No. 4:94CV00888 GFG, Document 33. They have now retained counsel, and the Court permitted them to conduct discovery on the issue of jurisdiction and file a supplemental response. Document 57.

Personal Jurisdiction

A Party seeking to invoke federal jurisdiction must establish the existence of jurisdiction. Newhard, Cook & Co. v. Inspired Life Centers., Inc., 895 F.2d 1226, 1228 (8th Cir. 1990). A court may rely on pleadings, affidavits and deposition testimony to determine whether jurisdiction exists. Piper v. Kassel, 817 F. Supp. 802, 804 (E.D. Mo. 1993). When relying on these materials, a court must view the facts in the light most favorable to the nonmoving party. See Watlow Elec. Mfg. Co. v. Patch Rubber Co., 838 F.2d 999, 1000 (8th Cir. 1988). "[J]urisdiction need not be proved by a preponderance of the evidence until trial or until the court holds an evidentiary hearing." Dakota Indus. v. Dakota Sportswear, 946 F.2d 1384, 1387 (8th Cir. 1991). Rather, "[t]o defeat a motion to dismiss for lack of personal jurisdiction, the

nonmoving party only make a prima facie showing of jurisdiction." Id.

Federal courts engage in a two-step analysis to determine whether personal jurisdiction exists over nonresident defendants: (1) is the state long-arm statute, here Mo. Rev. Stat. § 506.500, satisfied; and (2) is the exercise of jurisdiction over the nonresident defendants consistent with the due process clause of the Fourteenth Amendment. See Minnesota Mining & Mfg. Co. v. Nippon Carbide Indus., No. 94-3248, slip op. at 5 (8th Cir. Aug. 11, 1995).

To the extent relevant here, § 506.600 authorizes Missouri courts to exercise jurisdiction over nonresident defendants who transact business within the state or commit tortuous acts within the state. The Missouri Supreme Court has construed the long-arm statute as extending the jurisdiction of Missouri courts, "within the specific categories enumerated in the statutes, to the full extent permitted by the due process clause of the Fourteenth Amendment." State ex rel. Metal Serv. Center, Inc. v. Gaertner, 677 S.W.2d 325, 327 (Mo. 1984); see Piper, 817 F. Supp. At 804. Missouri courts have liberally construed the statutory requirement of transacting business within the state for the purpose of the long-arm statute. See Precision Constr. Co. v. J.A. Slattery Co., 765 F.2d 114, 117 (8th Cir. 1985) (corporation with two resident salesmen in Missouri which shipped belts to Missouri purchaser transacted business in Missouri within meaning of long-arm statute). Likewise, Missouri courts have construed the phrase "commission of a tortuous act within the state" broadly to include extraterritorial acts that produce actionable consequences in Missouri. Institutional Food Mktg. Associates. Ltd. v. Golden State Strawberries, Inc., 747 F.2d 448, 458 (8th Cir. 1984). In either circumstance, the statute requires the cause of action to arise from the performance of acts within the state. Fairbanks Morse Pump Corp. v. ABBA Parts, Inc., 862 F.2d 717, 719-20 (8th Cir. 1988).

Under the due process clause, courts may exercise jurisdiction over nonresident defendants only if the defendants have

"certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotations and citations omitted). In assessing the sufficiency of the contacts, federal courts focus on the relationship among the defendant, the forum, and the litigation. Shaffer v. Heitner, 433 U.S. 186, 204 (1977). The nonresident defendant must have "purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). The "test is met if a defendant has deliberately engaged in activities, such as having created continuing obligations, within a state, and such actions invoke the benefits and protections of a state's laws." Minnesota Mining & Mfg., No. 94-3284, slip op. at 5.

"Once it has been decided that a defendant purposefully established contacts with a forum state, these contacts must be considered in the light of other factors to determine whether the assertion of personal jurisdiction would agree with fair play and substantial justice." Id. The primary factors are: (1) the nature and quality of the contacts; (2) the quantity of the contacts; and (3) the relation of the cause of action to the contacts. The secondary factors are: the interest of the forum state in the litigation and the convenience or inconvenience to the parties. Id.

C & G argues that the Court lacks personal jurisdiction over it because the complaints fail to allege any specific conduct or acts by C & G within Missouri from which the causes of action against it could have arisen. Documents 12 & 17. In support of its motion, C & G has submitted a copy of the seven-page report on the Missouri electors it provided to the PPC and an affidavit from John J. Callahan. Callahan's affidavit states that C & G is a California corporation with its principal place of business in San Francisco, that C & G does not have any general business contacts with the

State of Missouri, and that C & G did not provide physical security at the PPC volunteer site in Missouri. Callahan aff. ¶¶ 3-9.

Callahan concedes that C & G conducted background checks on the plaintiffs at the request of Russ Melbye of the PPC. Id. at ¶ 10. The checks consisted of verifying the names and addresses given by the plaintiffs and conducting searches of public court records for criminal and civil matters involving each elector. Id. at ¶ 11. C & G performed the checks by verifying names and addresses through U.S. Datalink, and by obtaining information from public civil and criminal court records through a private investigation firm called North American Advisory. Id. at ¶¶ 13-14. C & G did not obtain a consumer report, a consumer credit report or any type of consumer information on the plaintiffs from any source. Id. at ¶ 15. Callahan denies that C & G used Orix Credit Alliance's access code to obtain consumer information on plaintiffs. Id. at ¶ 16. According to Callahan, C & G had no contact with Missouri in connection with the services it provided to the PPC. Id. at ¶¶ 18-24.

C & G also submitted an affidavit from Jeffrey A. Jones, systems administrator for U.S. Datalink. Document 36, exh. A. Jones explains the types of services U.S. Datalink provides to its subscribers. Id. at ¶¶ 2-4. Jones states that C & G did not request credit information on plaintiffs and that no such information was provided by C & G by U.S. Datalink. Id. at ¶ 4. Rather, U.S. Datalink did an address update search for C & G to verify the current and former addresses of plaintiffs. Id. at ¶¶ 5-6.

Perot and Blahnik argue that the Court lacks personal jurisdiction over them because the complaints do not establish any contacts by either of them with Missouri in relation to the cause of action. Perot and Blahnik maintain that they neither transacted business within Missouri nor committed a tortuous act within the state. Perot further asserts that plaintiffs' attempt to subject him to

liability for the acts of third parties under an agency theory lacks factual support. Documents 21 & 25.

Perot and Blahnik have submitted affidavits in support of their motions. Blahnik states that he has not had any general business contacts with Missouri, that he did not hire C & G for any purpose, that he neither knew of nor directed any activity of C & G in or related to Missouri, and that he never communicated with C & G regarding plaintiffs or any aspect of the Missouri for Perot operation. Blahnik aff. at ¶¶ 3-8. Blahnik further avers that he never sent any information to C & G in Missouri, that he never directed C & G to perform any services in Missouri, that he never engaged in any tortuous act in Missouri, and that he never made telephone calls or sent correspondence to Missouri in connection with the allegations of the complaints, and that he did not receive calls or correspondence from Missouri in connection with plaintiff's allegations. Id. at ¶¶ 9-12. Finally, the Blahnik states that he has not met any member of Missouri for Perot, that he did not direct any of the activities taken by Missouri for Perot, and that he has never visited the offices of Missouri for Perot. Id. at ¶ 13.

Perot's affidavit also denies any general business contacts with Missouri. Perot aff. at ¶¶ 3-7. Perot states that he maintained no contact with the individual members of Missouri for Perot, and that the PPC, Blahnik, McClure or Melbye did not act as his agents or subagents in connection with the allegations in the complaint. Id. at ¶¶ 9, 11. Perot further avers that he never employed McClure, paid her a salary, or directed her activities, and that he exercised no control over the PPC, Blahnik, Melbye, McClure or Missouri for Perot. Id. at ¶¶ 11-13. Perot states that he never directed anyone to conduct an investigation of plaintiffs, that he did not instruct or employ anyone to obtain consumer credit reports on plaintiffs, that he did not direct anyone to remove plaintiffs from their positions in Missouri for Perot, and that he did not direct anyone to make any statements about plaintiffs. Id. at ¶¶ 16-19.

1. Dotzler

In response to the motions to dismiss, Dotzler filed a letter with the Court in which he stated:

> Ross Perot, Mark Blahnik and Callahan & Gibbons had the required minimum contacts with Missouri through Ross Perot's deliberate yet reckless decision not to use the United States Secret Service for security and investigative activities in connection with his 1992 Presidential Campaign and to instead hire his own people to act like the Secret Service upon citizens of Missouri and other States.
>
> Ross Perot's directive and his employees/agents resulting actions should permit this court to fairly exercise personal jurisdiction over the actions of Ross Perot, Mark Blahnik and Callahan & Gibbons.

Document 61. Dotzler attached to this letter excerpts from a Blahnik's deposition taken in a Maryland action. Blahnik testified that he hired C & G to provide security for activities related to the Perot campaign in Maryland. Id.; Blahnik depo. At 17-20. Blahnik did not state that he took similar actions in connection with Missouri, however.

The Court concludes that Dotzler's response is insufficient to establish personal jurisdiction over C & G, Blahnik or Perot. Dotzler has failed to come forward with any evidence to refute the affidavits submitted by defendants in support of their motions to dismiss. The unrefuted affidavits establish that the defendants did not transact business or commit a tortuous act within Missouri. Thus, Dotzler has failed to satisfy the long-arm statute, the affidavits indicated that defendants did not have sufficient contacts with Missouri to enable the Court to exercise personal jurisdiction over them in connection with this action. The Court therefore

dismisses Dotzler's complaint against C & G, Blahnik and Perot for lack of personal jurisdiction.

2. Laughlin, Dyck & Alspaw

Laughlin, Dyck and Alspaw initially responded to the motions to dismiss pro se and attached an affidavit form Edward Dyck. Document 33. Dyck states that Clayton Mulford, former counsel to the PPC, admitted that C & G provided PP with "credit histories of some of the state coordinators". Id at ¶ 3. Dyck asserts that Mulford identified Blahnik as an individual who authorized the "investigations of campaign workers". Id. at ¶ 4. Dyck also refers to newspaper articles which reported that Perot campaign officials "acknowledged that security firms made credit checks on their behalf of several volunteers" and that Perot admitted that "private investigators were hired to investigate campaign workers." Id. at ¶¶ 5-6. Dyck avers that C & G admitted that it used U.S. Datalink to obtain information pertaining to plaintiffs; that records from TRW "reflect that my credit history was accessed through U.S. Datalink on May 5, 1992"; that records from Equifax "reflect that my credit history was accessed through Orix Leasing on May 7, 1992"; and that some of the information transmitted by C & G "could only have been obtained from my Equifax records". Id. at ¶¶ 7-10. The affidavit concludes by stating that plaintiffs "hold a reasonable belief that Defendant C & G obtained their credit histories at the request of Defendants Perot and Blahnik, and that some of the information which Defendant C & G transmitted to Defendant PPC and defendant Perot was derived through the use of the Orix Leasing access code?" Id. at ¶ 11.[2] In a supplemental affidavit, Dyck provided a copy of a credit profile from TRW, which

[2] C & G and Perot and Blahnik moved to strike the Dyck affidavit because the affidavit (1) is not based on personal knowledge and (2) relies on hearsay. Documents 35, 37 at 3 n.1.

indicates that U.S. Datalink made an inquiry on May 5, 1992. The entry is followed by the code "A/U". Document 44, exh. A-1.[3]

Plaintiffs have conducted discovery and supplemented their response to the motions to dismiss with the assistance of counsel. Document 70. The Court will discuss the response as it relates to the individual defendants.

A. C & G

Plaintiffs argue that the Court may exercise personal jurisdiction over C & G under the Missouri long-arm statute because C & G committed a tortuous act—impermissibly inquiring into plaintiffs' credit files—the effects of which were felt in Missouri. Document 70 at 4. Plaintiffs correctly assert that a tortfeasor need not be present in Missouri to commit a tortuous act within the state. See Peabody Holding co. v. Costain Group PLC, 808 F. Supp. 1425, 1433 (E.D. Mo. 1992). As previously noted, the long-arm statute allows courts to exercise personal jurisdiction over a nonresident tortfeasor who commits extra-territorial tortuous acts which have consequences within the state. Id. Plaintiffs must make a prima facie showing that the defendant has in fact committed the tort alleged in the complaint. Id.

Plaintiffs maintain that they have made a prima facie showing that C & G violated the FCRA and committed the tort of invasion of privacy (Counts I & VIII) by illegally inquiring into their credit files with Equifax. As support, plaintiffs point to the allegations of their complaint and their supplemental affidavits. Document 70, exhs. 1-3. Plaintiffs maintain that the evidence submitted indicates that C & G accessed plaintiffs' credit files through an access device and security code of Orix Leasing. Document 70 at 5. Plaintiff have filed copies of credit reports

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[3] "A/U" is an abbreviation for address update. Document 54, exh. R-1. Literature from TRW indicates that it provides this service to subscribers to help update mailing lists. Id. at R-2.

indicating that Orix Leasing requested a credit history on each of them on May 7, 1992. Id. exh 1, A; exh. 2; exh. 3, A, B. Further, plaintiffs correctly point out that the C & G reports contain some of the same information as is contained in Equifax credit reports. Id. at 5-6. Accordingly, plaintiffs contend that C & G could not have obtained this information from any source other than their credit histories. Id. at 6-7.

The Court concluded that plaintiffs have failed to make a prima facie showing that C & G engaged in any illegal or tortuous activity outside of Missouri which caused harm within the state. Plaintiffs have failed to come forward with any evidence to support their assertions concerning C & G's use of the Orix Leasing access code to obtain their credit histories. Though plaintiffs are not required to establish personal jurisdiction by a preponderance of the evidence at this stage of the proceeding, they must provide some evidence to support their allegations. Speculation and conjecture in the form of an affidavit is not sufficient to discharge this burden.

Moreover, the evidence indicating that U.S. Datalink used TRW's address update service to provide information to C & G does not establish a violation of the FCRA or the tort of invasion of privacy. The information U.S. Datalink obtained through this service is not a "consumer report" within the meaning of the FCRA. 15 U.S.C. § 1681a(d); see Hoke v. Retail Credit Corp., 521 F.2d 1079, 1081 (4th Cir. 1975), cert. Denied, 423 U.S. 1087 (1976). Even assuming the information is a consumer report as defined by the FCRA, there is no evidence that C & G obtained the information under false pretenses. See DiCarlo v. Maryland Auto Ins. Fund, 855 F. Supp. 823, 824 (D. Md. 1994) (liability under § 1681q requires evidence that requestor of information acted under false pretenses). Further, the information in the report is readily available in public documents and thus cannot be considered private.

Plaintiffs cite Bills v. Nixon, Hargrave, Devans & Doyle, 880 P.2d 743 (Ariz. Ct. App. 1994) to support their claim. Bils is distinguishable, however, because here , C & G denied obtaining credit information on plaintiffs, and plaintiffs have failed to submit any evidence to support their claim that C & G violated the FCRA. In Bils, the defendants admitted obtaining a credit report. Further, plaintiffs have failed to show that C & G had any contact with the state unlike the defendants in Bils. Accordingly, the Court lacks personal jurisdiction over C & G.

B. Blahnik

Plaintiffs' only claim against Blahnik is that he violated the FCRA by hiring C & G to conduct background checks of plaintiffs in April and May of 1992. Plaintiffs contend that Blahnik had sufficient contacts with Missouri for the Court to exercise personal jurisdiction over him. The evidence plaintiffs have submitted in their supplemental response indicates that Blahnik was the manager of field operations for the PPC. His duties included setting up a staff to help the states' organizations get Perot on the ballot. Document 70, exh. 6 at 11-12. Blahnik hired regional managers to assist in the organizational efforts. Russ Monroe was the regional manager for the area that included Missouri. Id. at 16-17. Monroe worked with the field representatives in the region Blahnik has weekly contact with Monroe. Id. at 18. Russ Melbye assisted Monroe in Missouri. Id. Blahnik interviewed Melbye for that job. Melbye stated that he hired C & G to conduct background checks on some of the electors to make certain that the electors were "good-standing citizens." Id. exh. 5 at 29. Melbye contacted C & g on Monroe's recommendation. Id. The list of electors given to C & G included plaintiffs. Id. Plaintiffs have also provided evidence indicating that Blahnik participated in a telephone call with Mulford on April 27, 1992, to Laughlin in Missouri. Blahnik advised Laughlin that the PPC would no longer recognize Laughlin as the state coordinator of Missouri for Perot. Id., exh 1 at ¶ 4, exh. 2 at ¶¶ 6-7. Plaintiffs' evidence also reveals that Blahnik attended the

presidential debate and Perot rally afterwards in St. Louis in October 1992. Id. at exh. 5, at 31, 54; exh. 7, 28-29.

The Court concluded that these contacts are insufficient to establish personal jurisdiction over Blahnik in Missouri. Blahnik had no contacts with Missouri in relation to the cause of action alleged against him. Moreover, there is no evidence to support the allegation that Blahnik hired C & G to conduct background checks on plaintiffs. Rather, Blahnik testified that he did not contact C & G regarding plaintiffs or any other volunteer in Missouri. Document 72, Blahnik depo. at 80-82. Blahnik did not request a consumer credit report on plaintiffs or information from a credit reporting agency. Id. at 81. Rather, Melbye contacted C & G regarding the investigation of the Missouri for Perot volunteers. Id., Melbye depo. at 29-30. Blahnik's other sporadic contacts with Missouri are unrelated to the cause of action asserted against and thus provide no basis for jurisdiction under the long-arm statute.

C. Perot

Plaintiffs have asserted claims against Perot for violating the FCRA (Count I), invasion of privacy (Count VIII), defamation (Counts IX, X), and negligence (Count XII). Plaintiffs maintain that the Court may exercise personal jurisdiction over Perot because (1) Perot systematically and intentionally conducted, or caused to be conducted, activities in the state and (2) Perot, through his agents and employees, engaged in tortuous conduct which damaged plaintiffs within the state.

In support of their claim that Perot systematically conducted or caused to be conducted activities in Missouri, plaintiffs note that in February 1992, Perot solicited volunteers in all 50 states to place him on the ballot and that Blahnik, an employee of Perot, became involved in the petition effort on Mach 10, 1992, by organizing a nationwide field staff to support the petition effort. Document 70, exh. 6 at 11, 16-17. Perot filed

declarations of candidacy for President of the United States and filed them with the Missouri Secretary of State on July 20, 1992. Id., exh. 10. Also, plaintiffs note that Perot was present in St. Louis, Missouri for a presidential debate and rally in October 1992.

Plaintiffs further assert that the Court may exercise personal jurisdiction over Perot because the actions giving rise to this cause of action were undertaken by Perot's agents in Missouri. Plaintiffs argue that McClure and Melbye were acting as Perot's agents at the May 19, 1992 meeting. Dyck and Laughlin have submitted affidavits stating that Melbye informed Laughlin three times during the course of that meeting that he was representing Ross Perot and that Perot supported the actions taken at the meeting. Id., exh. 1 at ¶ 3; exh. 2 at ¶ 7. Roger Yane, the statewide coordinator for the Perot petition drive in Ohio, provided an affidavit in support of plaintiffs' claims. Yane stated that Melbye and Monroe advised him that they were representing Perot with respect to the petition drive and that Monroe said he personally convinced Perot to repetition Missouri. Id., exh. 10 at ¶¶ 1-5.

The Court concludes that Perot's personal contacts with Missouri, as identified by plaintiffs, are insufficient to support jurisdiction. The evidence indicates that the contacts are unrelated to the causes of action asserted against him and do not arise from the specific transactions on which plaintiffs attempt to base jurisdiction. The Missouri long-arm statute requires such a connection. See Precision Constr. Co., 765 F.2d at 118-19. Moreover, Perot's presence in the state for a debate and rally occurred well after the events at issue herein transpired. Plaintiffs have identified no personal contact by Perot with Missouri during the relevant time. Thus, the only possible basis for personal jurisdiction over Perot is under plaintiffs' agency theory. With respect to Counts I and VIII, however, the agency theory is unavailing because plaintiffs have failed to submit any evidence to support their claim that Perot or his agents violated the FCRA.

Plaintiffs' agency theory also fails concerning the claims of defamation, false imprisonment and negligence because plaintiffs have failed to submit evidence to establish that Melbye and McClure were acting as Perot's agents at the time the actions giving rise to these claims took place. "The critical element which establishes the existence of an agency relationship is the right to control the conduct of the agent in the performance of the service for the principal." Lucas v. Enkvetchakul, 812 S.W.2d 256, 261 (Mo. Ct. App. 1991). Plaintiffs have failed to submit evidence to establish the critical element of control by Perot of the acts of the alleged agents.

Melbye testified that he never reported to Perot while he worked for the PPC. Document 72, Melbye depo. at 70. Melbye also indicated that he did not discuss the activities of Missouri for Perot with Perot. Id. According to Melbye, Perot did not direct Melbye's day to day activities in Missouri. Id. at 71. Melbye testified that he did not personally represent Perot at any time from April to December of 1992. Id. Melbye testified that Perot was not involved in the Missouri petition effort during that period. Id. at 73. Melbye further stated that he did not discuss the May 19, 1992 letter with Perot. Id. at 75.

Plaintiffs have submitted evidence indicating that Melbye and Monroe made statements to the effect that they were representing Perot during the May 19 meeting and thereafter. Document 70, exh. 1 at ¶ 3; exh. 2 at ¶ 7; exh. 11 at ¶¶ 4-5. Plaintiffs' reliance on these statements is misplaced, however. "[I]t is well established that apparent authority cannot be created by the acts of the supposed agent along." Earl v. St. Louis Univ., 875 S.W.2d 234, 238 (Mo. Ct. App. 1994).

Similarly, McClure's testimony reveals that during the time she served as state coordinator for Missouri for Perot, Perot had no involvement in the organization. Document 72, McClure depo. at 84. McClure was never employed by Perot, she never had authority

to make any decision on his behalf, and she had not even spoken with Perot when she took over the position as state coordinator. Id. at 86-87. McClure testified that Perot did not manage or direct any activities of Missouri for Perot and that she did not report to Perot on the actions she took in connection with the petition drive. Id. at 87.

The testimony of McClure and Melbye is consistent with Perot's affidavit. Taken together, this evidence indicates that Perot was not personally involved in the transactions giving rise to the claims against him and that McClure and Melbye were not acting as his agents with respect to these claims. Plaintiffs' complaint against Perot is therefore dismissed for lack of jurisdiction.

IT IS HEREBY ORDERED that C & G's motion to dismiss Dotzler's complaint for lack of personal jurisdiction is granted. Document 12.

IT IS FURTHER ORDERED that Blahnik and Perot's motion to dismiss Dotzler's complaint for lack of personal jurisdiction is granted. Document 25.

IT IS FURTHER ORDERED that Blahnik and Perot's motion to strike Dotzler's complaint is denied as moot. Doc 55.

IT IS FURTHER ORDERED that C & G's motion to dismiss Laughlin, Dyck and Alspaw's complaint for lack of personal jurisdiction is granted. Document 17.

IT IS FURTHER ORDERED that Blahnik and Perot's motion to dismiss Laughlin, Dyck and Alspaw's complaint for lack of personal jurisdiction is granted. Document 21.

IT IS FURTHER ORDERED that C & G's motion to strike Dyck's affidavit is denied as moot. Document 35.

IT IS FURTHER ORDERED that Blahnik and Perot's motion to strike Dyck's affidavit is denied as moot. Document 37.

Dated this 1st day of September, 1995.

/s/ George F. Gunn, Jr.
George F. Gunn, Jr.
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK DOTZLER,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00887 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	
		Consolidated With
KEVIN LAUGHLIN, et al.,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00888 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	

MEMORANDUM

GEORGE F. GUNN, JR., District Judge:

This matter is before the Court on the motions of defendants U.S. Datalink, Inc. and TRW, Inc. for summary judgment. For the reasons set forth below, the motions are granted.

Mark Dotzler, Kevin Laughlin, Edward Dyck and Carrie Alspaw filed separate pro se complaints against defendants Ross Perot,[1] the Perot Petition Committee (PPC), Mark Alan Blahnik, the Callahan & Gibbons Group (C & G),[2] U.S. Datalink, Inc. (Datalink), Equifax Credit Information Services, Inc., TRW, Inc. (TRW), Russ Melbye and Sandra Stone McClure. Dotzler's complaint was filed as No. 4:94CV00887 GFG. The complaint filed by Laughlin, Alspaw and Dyck was assigned No. 4:94CV00888 CAS. This Court consolidated the two actions in the Order of November 16, 1994.

According to the complaints in relevant part, Laughlin, with the support of Perot's representatives in Dallas, organized a group called "Missouri for Perot" to circulate petitions in order to place Perot's name on the 1992 presidential ballet as an independent candidate. Laughlin, Dyck and Dotzler developed a "Petition Pak," which contained biographical information about Perot, to distribute in Missouri and began to circulate petitions in the state.

In their complaints plaintiffs allege that Blahnik, acting as Perot's agent, hired C & G in April or May of 1992 to assist with the "security" of the petition drive. C & G investigated plaintiffs and allegedly was paid by Perot through the PPC. Plaintiffs claim C & G conducted inquiries into their consumer credit files and obtained information on Dyck and Dotzler from TRW and Datalink

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[1] In the Order of September 1, 1995, this Court granted Blahnik and Perot's motions to dismiss Dotzler's complaint and Laughlin, Dyck and Alspaw's complaint for lack of personal jurisdiction.

[2] In the Order of September 1, 1995, this Court granted the Callahan & Gibbons Group's motions to dismiss Dotzler's complaint and to dismiss Laughlin, Dyck and Alspaw's complaint for lack of personal jurisdiction.

on May 5, 1992 after requesting 102 searches[3] be completed on them. The requests containing each plaintiffs' first and last name, street address, city, state and zip code, were sent to Datalink via computer and printed out on paper. Plaintiffs also contend that Datalink furnished consumer reports to C & G without maintaining reasonable procedures designed to limit the furnishing of such consumer reports for the specifically enumerated purpose in the Fair Credit Reporting Act (FCRA).

Datalink provides access to public record repositories and proprietary databases to third party subscribers through an electronic gateway via computer software. Datalink entered into a Service Agreement with C & G by which C & G gained access to Datalink's database network via Datalink's computer software. The FCRA requires consumer reporting agencies to "maintain reasonable procedures designed to . . . limit the furnishing of consumer reports to the [permissible] purposes listed under 1681b of this title." 15 U.S.C. § 1681e.

Plaintiffs in their affidavits state that they were not applying for credit, seeking employment or any license, or engaging in any business relationship with C & G, PPC, Ross Perot or any of their agents or affiliated agencies. Plaintiffs' only relationship with the PPC or Perot was in the capacity as volunteers and electors campaigning for Perot's placement of the 1992 Presidential ballot in Missouri.

The complaints allege that Datalink (Counts VI and VII, Dotzler complaint and Counts VI and VII, Laughlin complaint) and TRW (Counts IV and V, Dotzler complaint and Counts IV and V, Laughlin complaint) violated the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681a-1681t, by providing a consumer credit report to Datalink without a permissible purpose and by

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[3] A 102 search is Datalink's internal code for a National Address Locator search, also known as an address update, a multi-database search.

failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes enumerated in the FCRA, 15 U.S.C. § 1681b. In particular, plaintiffs allege that Datalink and TRW are subject to civil liability for negligent noncompliance with the requirements of FCRA.

Datalink and TRW have moved for summary judgment contending that the information provided was not a consumer report or consumer credit information as defined by the FCRA. Datalink and TRW assert that TRW provided Datalink with and address update which contained only limited identifying information such as a person's name, social security number, date of birth, spouse's name and the date the address was reported to TRW. The address updates of Dotzler and Dyck were more limited inasmuch as the updates contained their names, addresses and social security numbers.

The Court notes that plaintiffs Laughlin and Alspaw have not asserted any claims against TRW nor has Alspaw asserted any claims against Datalink. Accordingly, the Court will not address plaintiffs' contention raised in their supplemental opposition to the motions for summary judgment of TRW and Datalink inasmuch as the report on Alspaw is the only report containing employment information. Although Dotzler has not filed any opposition to either of the summary judgment motions, the Court will assume that he adopted the memorandums in opposition filed by the other plaintiffs.

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In ruling on a motion for summary judgment, the court is required to view the facts in the light most favorable to the non-moving party and must give that party the

benefit of all reasonable inferences to be drawn from the underlying facts. AgriStor Leasing v. Farrow, 826 F.2d 732, 734 (8th Cir. 1987). The moving party bears the burden of showing both the absence of a genuine issue of material fact and his entitlement to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-587 (1986); Fed. R. Civ. P. 56(c).

Once the moving party has met his burden, the non-moving party may not rest on the allegations of his pleadings but must set forth specific facts, by affidavit or other evidence, showing that a genuine issue of material fact exists. Fed. R. Civ. P. 56(e). Anderson, 477 U.S. at 257; City of Mt. Pleasant v. Associated Elec. Coop., Inc., 838 F.2d 268, 273-74 (8th Cir. 1988). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

15 U.S.C. § 1681a(d) of the Fair Credit Reporting Act defines a consumer report as

> any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used . . . as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes. . . .

TRW supplied Datalink with an address update containing plaintiffs' names and current and former addresses as well as Dyck's social security information. This information did not bear

on plaintiffs' credit or general character, nor was it used to establish their eligibility for credit, employment or any of the other purposes listed in the statute. The evidence indicating that Datalink used TRW's address update service to provide information to C & G fails to establish a violation of the FCRA. The information Datalink obtained through this service is not a consumer report within the meaning of the FCRA. 15 U.S.C. § 1681a(d); see Hoke v. Retail Credit Corp. 521 F.2d 1079, 1081 (4th Cir. 1975), cert. Denied, 423 U.S. 1087 (1976). The Court also notes that the information contained in the address update reports is readily available in public documents

In fact, in their affidavits in opposition to the summary judgment motions, plaintiffs state that they were not applying for credit, seeking employment, seeking insurance or any license or engaging in any business relationship with C & G. Consequently, plaintiffs admit that they cannot meet the first requirement of the definition of consumer report insofar as plaintiffs were not involved in any consumer transactions with defendants or other transactions related to credit, insurance, employment or any other enumerated purposes listed in the definition of consumer report under the FCRA. The Court therefore concludes that the address updates did not constitute consumer reports within the strictures of the FCRA.

Furthermore, the Federal Trade Commission (FTC), the agency empowered to administer and enforce the FCRA pursuant to 15 U.S.C. § 1681s(a), in its Commentary has specifically addressed this question and found as follows: "A report limited solely to the consumer's name and address along, with no connotations as to credit worthiness or other characteristics, does not constitute a 'consumer report,' if it does not bear on any of the seven factors." FTC Commentary to the FCRA, 16 C.F.R. § 600 App. at 379-80 (1995). Accordingly, the FCRA does not cover the procuring of information about individuals not involved in consumer transactions.

There is no dispute that the address updates do not contain any connotations bearing on the credit worthiness of the plaintiffs. Although plaintiffs question the weight to be given to the FTC Commentary noting that the commentary does not have the force or effect of law, the Supreme Court has stated that when Congress has not addressed the precise issue,

> the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984) (footnote omitted). The Court further explained that an agency's interpretation of a statute it is entrusted to administer should be given considerable weight and should not be disturbed unless it appears from the statute or legislative history that Congress intended otherwise. Id.

The cases cited in support of their opposition to the summary judgment motions are inapposite inasmuch as those cases met the threshold requirement of a consumer report as the information obtained in those cases related to one of the seven characteristics outlined in 15 U.S.C. § 1681a(d). the definition of consumer report. Accordingly, plaintiffs have failed to establish that Datalink's use of TRW's address update service violated the FCRA.

Inasmuch as the information provided in the address updates has no bearing on the seven characteristics and therefore is not a consumer credit report, the Court will not address plaintiffs' claims that TRW's release of the information contained in the address updates violated either 15 U.S.C. § 1681b by negligently furnishing a consumer report with no permissible purpose as

provided in the FCRA or 15 U.S.C. § 1681e by failing to maintain reasonable procedures designed to restrict the furnishing of consumer reports for the purposes listed in § 1681b.

Dated this 6th day of February, 1996.

/s/ George F. Gunn, Jr.
George F. Gunn, Jr.
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK DOTZLER,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00887 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	
		Consolidated With
KEVIN LAUGHLIN, et al.,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	No. 4:94CV00888 GFG
	)	
ROSS PEROT, et al.,	)	
	)	
Defendant(s).	)	

ORDER AND JUDGMENT

GEORGE F. GUNN, JR., District Judge:

Pursuant to the memorandum filed on this date and incorporated herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant U.S. Datalink Inc.'s motion for summary judgment shall be and it is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant TRW Inc.'s amended motion for summary judgment shall be and it is granted.

Dated this 6th day of February, 1996.

/s/ George F. Gunn, Jr.
George F. Gunn, Jr.
United States District Judge